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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MATTHEW HOGAN,

Plaintiff,

V.

MATTHEW J. WEYMOUTH, et al..

Defendants.

No. 2:19-cv-02306-MWF-AFMx

OPPOSITION TO BEASLEY'S RULE 12(b)(6) MOTION

Hearing: Mon., July 29, 2019, 10:00 a.m.
Before: Hon. Michael W. Fitzgerald

I. INTRODUCTION

Plaintiff Matthew Hogan alleges that Beasley¹ published his private text message and falsely portrayed it, among other things, as being: (1) from a leadership official in the Los Angeles Rams, which Hogan is not; (2) sent to an injured player who was the subject of the text instead of to another private fan; (3) sent as a taunt to provoke or upset the player rather than as a joke as part of ongoing trash talk; and (4) sent after the player's injury was known to be serious, rather than in the heat of the game when Hogan suspected that the injury was not serious. Hogan alleges facts showing that Beasley knew

¹ “Beasley” will refer to defendants Beasley Broadcast Group, LLC, and Melissa Eannuzzo together. The defendant named as Beasley Broadcasting Group asserts that its proper name is Beasley Media Group, LLC. If so, Hogan will amend appropriately.

1 or had strong reason to suspect that these statements were all false. Hogan's allegations
 2 are adequate to state claims for defamation, disclosure of private facts, false light
 3 publicity, and intentional infliction of emotional distress.

4 **II. ARGUMENT**

5 To survive a motion to dismiss, a complaint needs "sufficient factual matter to
 6 state a facially plausible claim to relief." *Shroyer v. New Cingular Wireless Servs., Inc.*,
 7 622 F.3d 1035, 1041 (9th Cir. 2010). "When there are well-pleaded factual allegations, a
 8 court should assume their veracity and then determine whether they plausibly give rise to
 9 an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) The allegations need not
 10 be detailed, but should "be enough to raise a right to relief above the speculative level on
 11 the assumption that all of the complaint's allegations are true." *Bell Atl. Corp. v.*
 12 *Twombly*, 550 U.S. 544, 545 (2007). "If a reasonable court can draw the necessary
 13 inference from the factual material stated in the complaint, the plausibility standard has
 14 been satisfied." *Keys v. Humana, Inc.*, 684 F.3d 605, 610 (6th Cir. 2012). "Finally, the
 15 complaint should be read as a whole, not parsed piece by piece to determine whether each
 16 allegation, in isolation, is plausible." *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594
 17 (8th Cir. 2009).

18 Hogan's allegations more than suffice to "raise a right to relief above the
 19 speculative level," thus defeating Beasley's 12(b)(6) motion.

20 **1. Hogan's defamation claim is adequately pleaded.**

21 Statements are defamatory if they expose the plaintiff to contempt, ridicule, or
 22 obloquy, or cause him to be shunned or avoided, or have a tendency to injure him in his
 23 occupation. Cal. Civ. Code § 45; *Nygård, Inc. v. Uusi-Kerttula*, 159 Cal. App. 4th 1027,
 24 1047–48 (2008). Here, Beasley's false story exposed Hogan to contempt, ridicule and
 25 obloquy on social media and elsewhere, and ultimately caused him to lose his job and
 26 face difficulties finding new employment.² ([ECF No. 1 ¶¶ 57–59.](#))

28 ² Since the complaint was filed, Hogan has obtained new employment.

1 Beasley's statements constitute defamation per se because no explanation is
 2 needed to make their defamatory meaning understood and they "tended to"—and did, in
 3 fact—injure Mr. Hogan "in respect to his office, profession, trade or business."
 4 Illustrative is *Selleck v. Globe Int'l, Inc.*, 166 Cal. App. 3d 1123 (1985). In this case, a
 5 magazine publisher published a story headlined "Tom Selleck's Love Secrets—By His
 6 Father," which contained statements attributed to Tom Selleck's father that disparaged
 7 the romantic character of his son. *Id.* at 1132. Tom Selleck's father sued for defamation,
 8 alleging that he never actually spoke with or gave an interview to the magazine. *Id.* The
 9 court held that the statements were defamatory because "[f]alsely ascribing statements to
 10 a person which would have the same damaging effect as a defamatory statement about
 11 him is libel." *Id.* The court further found that, in light of the "impression" conveyed by
 12 the article, the statements were libelous on their face. *Id.* at 1132–33. "We conclude that
 13 the article, including the headline and caption and taking into account the circumstances
 14 of its publication, is reasonably susceptible of a defamatory meaning on its face and
 15 therefore is libelous per se." *Id.*

16 Likewise, here, Beasley "falsely ascrib[ed] statements" to Hogan by claiming that
 17 he sent a demeaning text to Mr. Chung when he did not. The impression, insinuation, and
 18 implication of Beasley's falsehoods, on their face, conveyed that Hogan was, at best,
 19 unprofessional and, at worst, insensitive and aggressive. *See also Wong v. Jing*, 189 Cal.
 20 App. 4th 1354, 1375 (2010) (denying an anti-SLAPP motion and motion to dismiss the
 21 plaintiff's libel claim because a jury could find that the false implications of a Yelp
 22 review were defamatory, in that "it could subject Wong to contempt and cause her to be
 23 avoided and thereby injure her professional career as a dentist").

24 Defendants artificially isolate their different falsehoods and argue that separately
 25 they are not defamatory. This analysis is improper. In assessing whether statements have
 26 a defamatory meaning, courts apply a "totality of the circumstances" test, reviewing the
 27 publication as a whole. *Balzaga v. Fox News Network, LLC*, 173 Cal. App. 4th 1325,
 28 1337–1338 (2009). "[T]he publication in question must be considered in its entirety; it

1 may not be divided into segments and each portion treated as a separate unit.” *Corman v.*
 2 *Blanchard*, 211 Cal. App. 2d 126, 131–32 (1962). Taken altogether, Beasley’s lies paint a
 3 picture of a heartless and aggressive leadership figure who knowingly taunted an injured
 4 player for a rival team. ([ECF No. 1 ¶ 54.](#)) The fact that each individual lie may be
 5 susceptible to an “innocent interpretation” does not matter; their cumulative effect is
 6 defamatory, as evidenced by the damage to Hogan’s personal and professional life.

7 Beasley argues that its statements are not defamatory because “Plaintiff did in fact
 8 taunt Chung (even if not directly to him).” ([ECF No. 15 at 12:25–26.](#)) A taunt is meant to
 9 provoke. If it was not directed at Chung, it was not a taunt. Hogan’s trash talk with
 10 another private fan was not meant to hurt anyone. This is obviously different from a
 11 disparaging comment sent directly to an injured player in an effort to upset or anger him.

12 Beasley argues that its story was “substantially true” based on the allegations of the
 13 complaint. In defamation law, “minor inaccuracies do not amount to falsity so long as the
 14 substance, the gist, the sting, of the libelous charge can be justified.” *Masson v. New*
 15 *Yorker Mag., Inc.*, 501 U.S. 496, 517 (1991). “Put another way, the statement is not
 16 considered false unless it ‘would have a different effect on the mind of the reader from
 17 that which the pleaded truth would have produced.’” *Id.*

18 Here, the complaint identifies a series of material falsehoods, all of which created a
 19 very different effect on the reader’s mind than the truth:

20 Hogan was not a Rams executive, which suggests a top officer who speaks
 21 for the organization; he was one of eight ticket sales account executives.

22 Hogan did not send the text to Chung as a taunt; he sent it to Weymouth as a
 23 joke to be understood in the context of their ongoing trash talk and expected
 24 it to be private. When he sent Weymouth the text, Hogan did not know that
 25 Chung’s injury was serious, that his arm was broken, or that he would not
 26 return to the game. The responding texts are not from Chung; they are from
 27 Weymouth.

28

1 [\(ECF No. 1 ¶ 51.\)](#)³

2 Beasley focuses on its misrepresentations of Hogan as part of Ram's leadership
 3 and of the text message as directed to Chung himself. These falsehoods created a very
 4 different effect on the reader's mind than the truth. The truth was that a random fan
 5 texted another while watching the game. The truth was too mundane for Beasley to
 6 publish. Instead, Beasley went with a story that the Los Angeles Rams taunted an injured
 7 player to his face. This is not morally equivalent to private trash talk. This is a someone
 8 in leadership intentionally inflicting emotional pain on a player who is already down.

9 The falsehoods that Beasley does not address also mattered. Hogan sent the text in
 10 the heat of the game and did not know that Chung's injury was serious. [\(ECF No. 1 ¶ 31.\)](#)
 11 Beasley's story makes it appear that the text was sent later, when the seriousness of
 12 Chung's injury was known. [\(ECF No. 1 ¶¶ 51–52.\)](#) Hogan sent the text as a joke to
 13 another fan, not as a mean-spirited taunt to Chung himself. [\(ECF No. 1 ¶¶ 27–28.\)](#)The
 14 responding texts are not from Chung, who might have had reason to be angry; they are
 15 from Weymouth, who was quite the trash-talker himself. [\(ECF No. 1 ¶¶ 21, 22, 28.\)](#)

16 The reality is that the facts were not juicy enough for Beasley. To add excitement
 17 and attract clicks, Beasley added falsehoods. If the falsehoods were as innocuous as they
 18 now contend, why add them to story? The falsehoods were far more interesting than the
 19 truth. And they were far more damaging to Hogan's reputation. Hogan's claim for
 20 defamation is adequately pleaded.

21 **2. Hogan claim for disclosure of private information is adequately pleaded.**

22 Beasley contends that by the time it published Hogan's private text message it was
 23 in the public domain. This is factually not true. Hogan sent a private text message that he
 24

25 ³ The complaint also alleges on information and belief that "the screenshots and comment
 26 were not posted by Chung himself; they were posted on Chung's behalf by Weymouth."
 27 [\(ECF No. 1 ¶ 51.\)](#) Hogan needs to conduct discovery to confirm the accuracy of this
 28 allegation.

1 expected to remain private. ([ECF No. 1 ¶¶ 28, 51.](#)) It was posted on social media against
 2 his wishes. Even then, the social media posts were quickly deleted, as Beasley's story
 3 conceded: it "was legit up for like two seconds" and "within a few minutes he took it
 4 down." ([ECF No. 1 ¶¶ 43, 50.](#)) The text message was not publicly available when
 5 Beasley decided to publish it. And Beasley had reason to suspect that the text message
 6 should never have been posted in the first place. ([ECF No. 1 ¶ 52.](#))

7 Beasley argues that any prior disclosure of a private fact—even for mere hours, as
 8 here—prevents liability for subsequent disclosure. The cite three cases for this
 9 contention, all of which involve plaintiffs who, unlike Mr. Hogan, forfeit any expectation
 10 of privacy by proactively making the information public. *Moreno v. Hanford Sentinel,*
 11 Inc., 172 Cal. App. 4th 1125 (2009); *Four Navy Seals v. Associated Press*, 413 F. Supp.
 12 2d 1136 (S.D. Cal. 2005); *Sipple v. Chronicle Publ'g Co.*, 154 Cal. App. 3d 1040 (1984).

13 In *Moreno*, the court of appeal addressed "whether an author who posts an article
 14 on myspace.com can state a cause of action for invasion of privacy and/or intentional
 15 infliction of emotional distress against a person who submits that article to a newspaper
 16 for republication." *Moreno*, 172 Cal. App. 4th at 1127. By posting the article on the
 17 Internet herself, the court held, the plaintiff lost any expectation of privacy. *Id.* at 1130.

18 Beasley also cites *Moreno* to argue that Beasley was justified in publishing the
 19 private text even after Chung's posts were deleted. But, again, the plaintiff in *Moreno*
 20 posted the allegedly private article herself. And she removed the article after six days, not
 21 within hours. *Moreno*, 172 Cal. App. 4th at 1130.

22 In *Four Navy Seals*, the plaintiffs "photographed themselves while capturing or
 23 detaining prisoners and thereafter allowed the posting of the photos on the internet." *Four*
 24 *Navy Seals*, 413 F. Supp. 2d 1136, 1145 (S.D. Cal. 2005). "An objectively reasonable
 25 person could not expect such photos to remain private under these circumstances." *Id.*

26 In *Sipple*, the plaintiff widely disclosed his sexual orientation voluntarily. *Sipple*,
 27 154 Cal. App. 3d at 1048. The court held that the defendants "did no more than to give
 28 further publicity to matters which appellant left open to the eye of the public." *Id.*

1 In contrast to all three decisions cited by Beasley, Hogan did nothing to relinquish
2 his privacy. Hogan states a claim for invasion of privacy by disclosure of private facts.

3. **Hogan states a claim for false light publicity, which is broader than his
4 defamation claim.**

5 Beasley argues that Hogan's false light publicity claim as duplicative of his
6 defamation claim. As discussed, the defamation claim is adequately pleaded. Further,
7 while there is overlap, false light publicity is broader than defamation. To make a claim
8 for false light publicity, "it is not necessary that the plaintiff be defamed"; rather "[i]t is
9 enough that he is given unreasonable and highly objectionable publicity that attributes to
10 him characteristics, conduct, or beliefs that are false, and so is placed before the public in
11 a false position." 5 Witkin, Summary 11th Torts § 781 (2018) (*citing* Rest.2d, Torts §
12 625E, Comment b.) Hogan adequately pleads that Beasley published his private text
13 message in an unreasonable and objectionable manner that attributed to him false
14 characteristics, conduct, and beliefs.

4. **Hogan states a claim for intentional infliction of emotional distress.**

15 Beasley asserts that "to the extent it is based on the same allegations as his
16 defamation claim," Hogan's emotional distress claim "must be dismissed for the same
17 reasons as that claim." ([ECF No. 15 at 10:7–9.](#)) Again, if this were true, Hogan's
18 defamation claim is adequately pleaded. But Hogan's claim for intentional infliction of
19 emotional distress is not co-extensive with his defamation claim.

20 Beasley contends that its public humiliation and vilification of Hogan, which cost
21 him his job and caused him emotional distress, was not egregious conduct. ([ECF No. 15
22 at 10:13–14.](#)) This element is satisfied if "[a] jury could conclude these facts reveal an
23 'alarming absence of sensitivity and civility.'" *KOVR-TV, Inc. v. Superior Court*, 31 Cal.
24 App. 4th 1023, 1030 (1995). Beasley's misconduct exceeds this standard. On three
25 different public platforms, they demonized a private figure and lied about a private text
26 exchange. They had reason to believe their story was false and refused to retract their
27 statements even when alerted to the truth. A jury could conclude that their misconduct
28

1 showed an alarming absence of sensitivity and civility. *See Huntingdon Life Scis., Inc. v.*
2 *Stop Huntingdon Animal Cruelty USA, Inc.*, 129 Cal. App. 4th 1228, 1260 (2005)
3 (finding that a defendant's website entries, exposing and protesting an employee of an
4 animal testing lab, could support cause of action for intentional infliction of emotional
5 distress).

6 **III. CONCLUSION**

7 For the foregoing reasons, the Court should deny Beasley's anti-SLAPP motion
8 and its Rule 12(b)(6) motion to dismiss Hogan's first, second, third, and fourth causes of
9 action.

10 DATED: July 1, 2019

11 THE INTERNET LAW GROUP

12 _____
13 /s/ Richard A. De Liberty _____
14 Richard A. De Liberty
Attorneys for Plaintiff

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